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May 26, 2020

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: *Rural Digital Opportunity Fund*, WC Docket No. 19-126

Dear Ms. Dortch:

On April 10, 2020, Frontier Communications Corporation (“Frontier”) submitted a list of 16,987 census blocks where it offers service at speeds of 25/3 Mbps or greater that nonetheless still appeared on the FCC’s preliminary list of eligible areas for the Rural Digital Opportunity Fund (“RDOF”) Phase I auction.¹ On May 26, 2020, the undersigned along with Ken Mason and Diana Eisner of Frontier met with Michael Janson (OEA), Alex Minard (WCB), Katie King (WCB), Emily Burke (OEA), Lauren Garry (OEA), Ken Lynch (OEA), and Jon McCormack (OEA) to discuss Frontier’s filing. The purpose of the meeting was to answer any questions about Frontier’s April 10 census block filing and any comments in the record regarding that filing.

In late April, WISPA, NRECA, and NTCA filed letters questioning Frontier’s April 10 filing.² Despite Frontier’s response explaining that these census blocks (a) reflect five years of CAF Phase II deployment to 600,000 homes and businesses; (b) were largely reported at speeds of 25/2 Mbps with Frontier’s June 2019 Form 477 filing; (c) are consistent with levels of deployment of peer DSL carriers; and (d) were filed with the December Form 477 prior to the RDOF challenges process,³ a few additional parties have filed additional letters regarding Frontier’s filing.⁴ Rather than directly responding, the parties (1) generally point to

¹ See Letter from Diana Eisner, Frontier, to Marlene H. Dortch, FCC, WC Docket No. 19-126 (Apr. 10, 2020).

² See Letter from Louis Peraertz, WISPA, and Brian O’Hara, NRECA, to Marlene Dortch, FCC, WC Docket No.19-126 (Apr. 27, 2020); Letter from Mike Romano and Brian Ford, NTCA, to Marlene Dortch, FCC WC Docket No.19-126 (Apr. 29, 2020).

³ See Letter from AJ Burton, Frontier, to Marlene Dortch, FCC, WC Docket No. 19-126 (May 1, 2020).

⁴ See Letter from David A. LaFuria, counsel for Smith Bagley, Inc., to Marlene Dortch, WC Docket No.19-126 (May 15, 2020) (“SBI Letter”); Letter from Tom Reid, Broadband Consultant for the Buckeye Hills

questionable⁵ or irrelevant⁶ data sources; (2) suggest that because a single home in a few census blocks may not have access to 25/3 Mbps, all homes in all Frontier's census blocks should be rejected;⁷ or (3) make what amount to *ad hominem* attacks about Frontier's service.⁸

Frontier shares the parties' goal to rapidly expand broadband in rural America, but ultimately these are complaints about the Commission's decision to divide the RDOF into two phases and to include partially served census blocks in Phase II. In effect, these letters represent untimely petitions for reconsideration of the Commission's determination that only "census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps" based on the most recent Form 477 data are eligible for Phase I of RDOF.⁹ Indeed, the Commission acknowledged that "Form 477 data have been criticized for identifying partially served blocks as 'served.'"¹⁰ However, as the Commission explains, this "primary shortcoming[] of FCC Form 477 data do[es] not come into play under the two-phased framework" the Commission adopted for the RDOF.¹¹ Thus, none of these "challenges" call into question Frontier's filing. And, in any event, Frontier explained with its May 23 ex parte that it "would welcome the inclusion into the RDOF auction the challenged census blocks where Frontier provides service at speeds of 25/3 Mbps and greater."¹²

Smith Bagley, Inc.'s Letter

Smith Bagley, Inc. ("SBI") is the latest party to file a letter filled with claims about Frontier's service offerings that falls apart upon review. While Smith Bagley, Inc. ("SBI") suggests it has conducted an investigation into Frontier's filing and the census blocks challenged, SBI relies on a questionable website and scattershot sampling of just 3 specific address out of 1,300 census blocks it lists.

SBI largely relies on data from BroadbandSearch.net to assert that Frontier does not serve 1,300 census blocks that overlap SBI's service area in New Mexico and Arizona. However, SBI's reliance on BroadbandSearch.net is misplaced. While BroadbandSearch.net says it obtains its

Regional Council, to Marlene Dortch, WC Docket No.19-126 (May 4, 2020) ("Buckeye Hills Letter"); Letter from Jonathan Chambers, Conexon, to Marlene Dortch, WC Docket No.19-126 (May 5, 2020) ("Conexon Letter"); Letter from Christopher Mitchell, ILSR, to Marlene H. Dortch, WC Docket No. 19-126 (May 11, 2020) ("ILSR Letter").

⁵ See, e.g., SBI Letter (pointing to BroadbandSearch.net).

⁶ See ILSR Letter (discussing speeds of other carriers); Buckeye Hills Letter (citing HUBB data).

⁷ See SBI Letter.

⁸ See SBI Letter, Buckeye Hills Letter, Conexon Letter, ILSR Letter.

⁹ *In the Matter of Rural Digital Opportunity Fund, Connect America Fund, et al.*, Report and Order, WC Docket Nos. 19-126, 10-90 (Jan. 30, 2020), ("RDOF Order") ¶¶ 9, 13.

¹⁰ *Id.* ¶ 10.

¹¹ *Id.*

¹² See Letter from Ken Mason, Frontier Communications, to Marlene Dortch, WC Docket No. 19-126 (May 23, 2020) ("Frontier May 23 Letter").

information from “tons of government sources,”¹³ the sources identified are outdated, including the National Broadband Plan from 2010, the 2015 Broadband Progress Report, and the “Broadband Performance” Report from the FCC.¹⁴ It does not appear that BroadbandSearch.net even utilizes the FCC’s most recent publicly available 477 data (from June 2019).¹⁵ Fundamentally, SBI’s citation to BroadbandSearch.net confirms what Frontier has already explained in the record regarding reporting a maximum DSL speed of 25/2 Mbps prior to its December 477 filing.

Moreover, SBI’s citation to three cherry-picked addresses out of 1,300 census blocks misses the mark. The speed at which service is available is dependent on the specific address where service is requested, as speeds over copper are higher the closer a location is to the digital subscriber line access multiplexer (DSLAM). Frontier does not claim it serves every location in each census block at 25/3 Mbps. Under the Commission’s rules, carriers report the fastest speed available for sale in that census block, even if it is only available in one or a handful of locations. At bottom, SBI’s complaint is with this decision – it wishes to bid on certain census blocks, which are partially unserved but must wait until RDOF Phase II because Frontier offers service to one or more locations in those blocks at 25/3 Mbps.

Although SBI submits what appears to be a lengthy technical filing, its filing amounts to a listing of 31 pages of Frontier census blocks, 42 pages of pulling old BroadbandSearch.net data citing old Form 477 data, and 2 pages of an SBI employee speed test with the “approximate location” of the test. While SBI might be displeased with the Commission’s decision, its shotgun assertions sampling just three addresses proves the importance of the Commission expeditiously completing location-level mapping and conducting RDOF Phase II.

Buckeye Hills Regional Council’s Letter

Buckeye Hills Regional Council (“Buckeye Hills”) similarly purports to file a technical challenge to Frontier’s filing yet is really objecting to the Commission’s underlying decision to save partially unserved census blocks for RDOF Phase II.

Buckeye Hills primarily bases its assertion that Frontier only offers 10/1 Mbps on the data Frontier has reported to the Universal Service Administrative Company’s High Cost Universal

¹³ See BroadbandSearch.net, *Data Sources* (last accessed May 22, 2020), <https://www.broadbandsearch.net/sources>.

¹⁴ There is no “Broadband Performance” report that Frontier can find. We believe BroadbandSearch is referring to the Measuring Broadband America Report, the most recent of which contains 2017 data. See <https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-eighth-report>.

¹⁵ For instance, the data does not match Frontier’s June 2019 Form 477 filing, the most recent Form 477 filing. See generally BroadbandSearch.net, *Provider: Frontier* (last accessed May 22, 2020), <https://www.broadbandsearch.net/provider/frontier>.

Broadband (“HUBB”) portal,¹⁶ and the associated publicly available Connect America Fund Broadband Map.¹⁷ Buckeye Hills is correct that in its CAF II reporting, Frontier reports all CAF II locations at 10/1 Mbps in the USAC HUBB system. Consistent with CAF II obligations and reporting requirements, Frontier uploads a speed tier ID of “3”, reflecting the CAF II speed of 10/1 Mbps.¹⁸ The HUBB also provides additional speed tiers associated with other programs, such as the CAF II Auction and the rate-of-return carrier CAF II program – these include speeds like 1 Gbps/500 Mbps, 100/20 Mbps, and 25/3 Mbps – none of which match Frontier’s DSL speed tier offerings particularly well.¹⁹ Form 477 data, on the other hand, is reported using the highest speed available in a census block.

Buckeye Hills other claims similarly lack substance. Buckeye Hills’ assertion that Frontier and others engage in a “clear strategy of de minimis deployment” – suggesting Frontier strategically chose to only deploy to a single address in a census block – is without basis or support. Likewise, Buckeye Hills includes 346 pages of complaints about Frontier’s service quality, which is irrelevant to whether or not a carrier offers service at speeds of 25/3 Mbps.

Conclusion

For purposes of the Form 477, the FCC has decided that a census block is “served” if the provider can or does provide service to one location, and for purposes of the RDOF, the Commission has decided that if a block is reflected as served on the Form 477, it will be included in RDOF Phase II.²⁰ None of the parties who have filed letters with the FCC challenging Frontier’s filing have filed a petition for reconsideration of those decisions. They cannot do so through a scattershot challenge to one-off census blocks, *ad hominem* attacks, and irrelevant sources.

Frontier has been happy to provide its explanation of its December 477 filing and how it was made public through the RDOF filing and believes other parties – especially those that filed an even greater number of challenges – should do the same.²¹

As Frontier explained in its May 23 letter, Frontier would welcome these blocks – where it already

¹⁶ See Universal Service Administrative Company, *Submit Data in the HUBB* (last accessed May 22, 2020), <https://www.usac.org/high-cost/annual-requirements/submit-data-in-the-hubb/>.

¹⁷ See Universal Service Administrative Company, *Connect America Fund Broadband Map* (last accessed May 22, 2020), <https://data.usac.org/publicreports/caf-map/>.

¹⁸ See Universal Service Administrative Company, *High Cost Universal Broadband (HUBB) Data Formatting Instructions* at 6 (last accessed May 22, 2020), <https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HUBBDataFormatting.pdf>.

¹⁹ *Id.*

²⁰ See generally, FCC, *Fixed Broadband Deployment Data from FCC Form 477* (last accessed May 22, 2020), <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477>; RDOF Order ¶ 10.

²¹ Joan Engebretson, *FCC Receives Over 180 RDOF Eligible Area Challenges, Including Some Big Ones from WISPs*, Telecompetitor, (May 5, 2020), <https://www.telecompetitor.com/fcc-receives-over-180-rdof-eligible-area-challenges-including-some-big-ones-from-wisps/>.

provides speeds of 25/3 Mbps or greater – in RDOF Phase I so it can have an opportunity to obtain continued support to provide service to these high cost areas.²² But to the extent the Commission decides to maintain its decision to include partially served census blocks in RDOF Phase II, SBI, Frontier, and any other company will be able to bid on those locations after mapping is complete and Phase II is implemented.

Please contact the undersigned with any questions.

Sincerely,

/s/ AJ Burton

AJ Burton
FRONTIER COMMUNICATIONS

CC: Michael Janson
Alex Minard
Katie King
Emily Burke
Lauren Garry
Ken Lynch
Jon McCormack

²² Frontier May 23 Letter.